SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD R. COOCH
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE
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BY FACSIMILE & REGULAR MAIL

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Re: ***Sherri L. Watson v. Metropolitan Property & Casualty Insurance Company***
C.A. No. 02C-05-261 RRC

Submitted: September 12, 2003
Decided: October 2, 2003

On Defendant's Motion for Partial Summary Judgment. GRANTED IN PART, DENIED IN PART.
On Defendant's Motion in Limine. DENIED IN PART, DEFERRED IN PART.
On Plaintiff's Application to Prohibit Defendant's Expert from Offering Testimony. DEFERRED.

Dear Counsel:

Plaintiff filed suit to recover medical expenses stemming from an automobile accident that Defendant refused to pay on the ground that the amounts billed were excessive. Plaintiff also averred that this refusal was unreasonable and in "bad faith," and she requested punitive damages and attorneys' fees. Defendant

filed a Motion for Partial Summary Judgment on these three issues, asserting that the "reasonableness" of medical expenses under Delaware's no-fault statute is to be determined by the medical provider and the insurance company (and that Plaintiff has failed to proffer evidence establishing such "reasonableness"), that Plaintiff has failed to demonstrate that Defendant had acted in bad faith because Plaintiff has taken no discovery on this issue (and therefore punitive damages cannot be recovered), and that there is no basis by statute or by contract to award to Plaintiff her attorneys' fees.

Because this Court cannot now rule that the complained-of bills rendered by Dr. Ross Ufberg in his treatment of Plaintiff were not "reasonable" in amount (a determination to be made by the finder of fact) and because the finder of fact must determine whether Dr. Ufberg can support the "reasonableness" of those amounts (which testimony this Court will permit to be introduced at trial), Defendant's Motion for Partial Summary Judgment is hereby **DENIED IN PART** and that portion of Defendant's Motion in Limine which seeks to bar Dr. Ufberg from testifying at trial must likewise be **DENIED.** (The Court will not now act on the portion of the Motion in Limine which seeks to bar Dr. James Fusco from testifying at trial; accordingly, the Motion in Limine is also **DEFERRED IN PART**.) However, as to those portions of Defendant's Motion for Partial Summary Judgment which seek to preclude an assertion of "bad faith" and to preclude an award of attorneys' fees in Plaintiff's favor, the Court largely agrees with the positions advanced by Defendant, and accordingly, those portions of the Motion for Partial Summary Judgment are **GRANTED**.

FACTUAL AND PROCEDURAL HISTORY

Plaintiff, an occupant of an automobile involved in an accident on January 8, 2001, sustained compensable injury. Following the accident, Plaintiff treated with Dr. Ross Ufberg and with Dr. James Fusco. Defendant provided no-fault benefits to Plaintiff pursuant to title 21, section 2118 of the Delaware Code.[1] However, following an independent medical exam of Plaintiff conducted at Defendant's request, Defendant discontinued payments for any additional medical treatment to Plaintiff.

Prior to the discontinuance of her no-fault benefits, Plaintiff's bills from Dr. Ufberg totaled $495. Of that amount, Defendant paid Dr. Ufberg $328.10, leaving a balance of $166.90, presumably for Plaintiff herself to pay.[2] Defendant paid these lesser amounts to Dr. Ufberg based on its purported assessment of similar medical provider charges "within th[is] provider's geographic region."[3] Plaintiff saw Dr. Ufberg two additional times following the independent medical exam, each time being charged $105 (for a total of $210);[4] this $210 amount apparently remains unpaid, so Dr. Ufberg's unpaid bills total $376.90.

In May 2002 Plaintiff filed suit to recover "unpaid medical expenses and/or loss of wages, plus any additional expenses and/or losses to be incurred in the

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[1] Section 2118(a)(2) provides, in pertinent part, that a vehicle owner must carry insurance to pay "[c]ompensation to injured persons for reasonable and necessary [medical] expenses incurred within [two] years from the date of the accident…."

[2] See Ex. "1(A)" to Pl.'s Resp. to Def.'s Mot.

[3] See Exs. "B" and "C" to Def.'s Mot.

[4] Ex. "1(A)" to Pl.'s Resp. to Def.'s Mot.

future…."[5] (Plaintiff has since represented that in addition to the amounts billed by Dr. Ufberg, Dr. Fusco is owed $2,177, and "Spinal Imaging" is owed $390 for x-rays.)[6] Plaintiff additionally averred that Defendant's "refusal to honor its insurance policy and pay the no-fault benefits to the extent of its coverage…[wa]s unreasonable…and in bad faith…and ha[d] caused…consequential losses and mental anguish."[7] Plaintiff requested a jury trial and demanded judgment against the Defendant "for compensatory and punitive damages, consequential damages, and attorneys' fees."[8]

In its Answer to the Complaint, Defendant admitted that Plaintiff "received certain injuries and treatment in connection with the…auto accident[ ]"[9] but averred that "Plaintiff fail[ed] to state the nature of the claim other than [in] a generic…[manner]."[10] Defendant denied that its actions were undertaken in "bad faith," and stated as an affirmative defense that Plaintiff's Complaint "fail[ed] to state a claim for punitive damages."[11] Defendant also requested a jury trial.

The docket indicates that in terms of discovery, Plaintiff so far has propounded a single set of interrogatories and a single request for production of

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[5] Compl. ¶ 7.

[6] Pl.'s Resp. to Def.'s Mot. at 1.

[7] Compl. ¶ 9.

[8] Compl. at 2.

[9] Answer ¶ 4.

[10] Id. ¶ 5.

[11] Id. ¶ 10.

documents upon Defendant. The discovery cut-off date has passed. Despite the establishment of both "expert" and "fact" discovery deadlines, it does not appear that Plaintiff conducted any other discovery prior to the dispositive motion deadline in this case. By letter dated July 3, 2003 (four days before Defendant's expert witness cutoff deadline), however, counsel for Defendant indicated to counsel for Plaintiff that Defendant had retained an expert "in the area of hospital and physician medical expense coding[ ]" and that in that expert's opinion, "based upon data collected in th[e] geographical area[,]" was that Defendant had paid "all reasonable and necessary charges imposed by…Dr. Ufberg."[12]

Defendant thereafter filed the instant motion, through which it moves for an order of partial summary judgment "as to the [un]reasonableness of…[Dr. Ufberg]'s charges and/or Plaintiff's standing to litigate that issue[ ][,] as to Plaintiff's bad faith claim[ ][,] and as to Plaintiff's claims for punitive damages and attorney's fees."[13] A two-day trial is scheduled for October 8, 2003.

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[12] Letter from Norman H. Brooks, Jr. to L. Vincent Ramunno of 7/3/03, at 1 (Ex. "3" to Pl.'s Resp. to Def.'s Mot.). By letter dated September 8, 2003, counsel for Plaintiff has indicated that Plaintiff objects to this expert giving testimony on the ground that "the basis for her testimony is not sufficiently set forth so as to enable preparation of an effective cross[-]examination of her…." Letter from David R. Scerba to the Court of 9/8/03, at 1 (Dkt.# 28). In its Reply in support of its Motion in Limine, Defendant contends that its "coding" expert based her opinion "upon data collected for each CPT code in this particular geographical area." Def.'s Reply ¶ 2a. This matter will be taken up, if necessary, at trial (in order to allow for further in-court *voir dire* outside of the presence of the jury to additionally explore the witness's expertise); the Court notes, however, that Defendant's "coding" expert was timely identified, and that counsel for Plaintiff apparently did not depose her prior to the close of all discovery in this matter.

[13] Def.'s Mot. at 4.

CONTENTIONS OF THE PARTIES

Defendant's preliminary argument in its Motion for Partial Summary Judgment is that "[t]he issue of whether a medical expense is reasonable is an issue properly left to resolution by the…[insurer] and the [medical] provider[ ]"; Defendant therefore contends that Plaintiff "lacks standing to maintain an action against…[it] over the reasonableness of the fees charged by the doctors who treated her."[14] Defendant alternatively argues that summary judgment in its favor should be granted because Plaintiff "has proffered no evidence that the amounts charged by…[Dr. Ufberg] are reasonable."[15]

Defendant maintains that "[t]he affidavit of Dr. Ufberg [attached to Plaintiff's Response and purportedly establishing the "reasonableness" of his fees] speaks for itself in that it is nothing more than a conclusory statement"[16] which is "insufficient as a matter of law[ ]";[17] Defendant contends that Plaintiff therefore "fails to satisfy her burden of proof on the issue" and that it is correspondingly entitled to judgment as a matter of law."[18] Defendant cites Anticaglia v. Lynch[19]

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[14] Def.'s Mot. ¶ 9.

[15] Id. ¶ 10.

[16] Def.'s Reply ¶ 3.

[17] Id.¶ 4.

[18] Id. ¶ 7.

[19] C.A. No. 90C-11-175, 1992 WL 138983, at *6-*7 (Del. Super. Ct. Mar. 16, 1992) (holding that the determination of a "reasonable" and "customary" fee is entirely factual in nature, and that the medical provider testifying on behalf of the reasonableness of his billing in that case had provided "no reliable proof" of the customary and reasonable fees to be expected because he alone testified to their reasonableness).

in support of that last proposition.

With regard to Plaintiff's "bad faith" claim, Defendant argues in its Motion for Partial Summary Judgment that "there is simply no evidence that…[it]'s actions were 'clearly without any justification,' as is required to establish bad faith[ ]";[20] in support, Defendant cites Casson v. Nationwide Insurance Co..[21] Defendant highlights that Plaintiff "has taken no depositions in th[is] case[ ]" and that she "has pursued no discovery in furtherance of her allegation…."[22] Defendant posits that because "there exist[s] no record evidence tending to support [P]laintiff's allegation" it is "entitled to judgment as a matter of law on plaintiff's claim for bad faith…."[23]

Defendant similarly contends in its Motion for Partial Summary Judgment that Plaintiff's claims for punitive damages and attorneys' fees "have no basis, and should be dismissed[ ][,]"[24] and it again cites to Casson for support of its proposition.[25] Defendant contends that "[i]n an action at law, a court may not

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[20] Def.'s Mot. ¶ 14.

[21] 455 A.2d 361, 369 (Del. 1982) (formulating that standard in response to the plaintiff's argument that an insured's "bad faith" refusal to make payments due under an insurance contract breached an "implied duty to deal fairly and in good faith with an insured").

[22] Def.'s Reply ¶ 10.

[23] Id. ¶ 12.

[24] Def.'s Mot. ¶ 15

[25] See Casson, 455 A.2d at 368 (stating that "given a proper set of circumstances," Delaware courts "would authorize recovery of punitive damages in egregious cases of willful or malicious breach of contract[ ]" but that "[a]n assertion of malice without factual basis is insufficient[ ]").

order payment of attorney's fees…unless…authorized by some provision of statute or contract[ ]";[26] Defendant states that there is no such provision in the policy at issue, and again cites Casson for the proposition that "there is…[no] statutory authorization for [such] an award…in a suit for no-fault benefits…."[27]

Lastly, Defendant contends in its Motion in Limine that "[n]either Dr. Ufberg's affidavit nor any other evidence proffered by Plaintiff offers any credible data or other basis or method commonly accepted by scientists, physicians or economists which would support Dr. Ufberg's conclusory statement at to the reasonableness of his fees when compared to those charged by other physicians similarly situated in the area."[28] Because Defendant contends that such evidence does not satisfy either Delaware Rule of Evidence 702[29] or the Anticaglia case, it argues that "Dr. Ufberg's testimony in this regard is merely the product of his own belief or speculation, and must [therefore] be precluded from…trial."[30]

In response to Defendant's preliminary argument regarding her standing, Plaintiff puts forward that "Defendant's…[contention] is frivolous, absurd, and

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[26] Def.'s Mot. ¶ 16.

[27] See Casson, 455 A.2d at 370 (stating after refuting the plaintiff's argument that the insurer's conduct therein fell within Delaware's Prohibited Trade Practices Act that "there is no statutory basis for an award of attorney's fees in this [no-fault] case[ ]").

[28] Def.'s Mot. in Limine ¶ 14 (Dkt.# 21). Again, the Motion in Limine also seeks to prohibit Dr. Fusco from testifying at trial on similar grounds, an argument which this Court will not now decide.

[29] Rule 702 provides a three-part test for the admission of "expert" testimony.

[30] Def.'s Mot. in Limine ¶ 14.

reflect[s] clearly upon Defendant's bad faith…."[31] Plaintiff (correctly) argues that Defendant "offers absolutely no authority for the proposition that it seeks to advance…[regarding Plaintiff's standing]."[32] With regard to Defendant's substantive argument concerning the reasonableness of Dr. Ufberg's billings, Plaintiff responds by attaching an affidavit executed by the doctor stating that "the specific charges assessed are reasonable…and are wholly consistent with what is usually and customarily charged in this medical community…";[33] Plaintiff therefore declares that "questions of 'reasonableness' are commonly left for the jury to decide…."[34] In fact, Plaintiff contends that "if forced to trial…[she] will present the single question of whether Plaintiff's bills meet the statutory threshold for compensability, *i.e.*, whether they are reasonable, necessary and causally related to the subject accident."[35]

Plaintiff further advances that "[n]othing in the [no-fault] statute or the case law requires an insured to submit documentation along with…medical bills to establish that…charges [we]re reasonable."[36] Plaintiff contends that "[u]nder these circumstances, Dr. Ufberg's [a]ffidavit…[i]s a timely rebuttal to the final hour assertion of a defense and the listing of a new "expert" [in Mr. Brooks's July

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[31] Pl.'s Resp. to Def.'s Mot. ¶ 1.

[32] Id.

[33] Ross Ufberg Aff. ¶ 4 (Ex. "1" to Pl.'s Resp. to Def.'s Mot.).

[34] Pl.'s Resp. to Def.'s Mot. ¶ 2.

[35] Letter from L. Vincent Ramunno to the Court of 8/6/03, at 1.

[36] Pl.'s Resp. to Def.'s Mot. ¶ 5.

3, 2003 letter to Plaintiff's counsel]…despite ample time and opportunity to…[previously disclose that information]."[37]

With regard to punitive damages, Plaintiff argues that her claim "is genuine."[38] In support, Plaintiff contends that "the Defendant's position in refusing to pay the bills of Dr. Ufberg is clearly without justification, thus entitling Plaintiff to an award of punitive damages[ ]";[39] like Defendant, Plaintiff cites to Casson to support her argument.[40]

In response to Defendant's Motion in Limine, Plaintiff argues that she does have sufficient evidence to establish the "reasonableness" of Dr. Ufberg's charges, in that:

> If…permitted to testify, [Dr. Ufberg] would say that he is a state-licensed physician, who has owned and operated his own medical facility specializing in the treatment of the same type of injuries sustained by [Plaintiff] since 1985; that he is familiar with his billing practices and his charges since he in fact established them; that these charges are the very same charges paid by the majority of insurance companies with which he deals, as well as self[-]insureds, everyday in his practice; that he is aware generally of what other facilities in the local community charge for services similar to his own; that his charges are in no event excessive or unreasonably higher than those charged elsewhere as evidenced by the fact that they are paid in full by the majority of insurance companies with which he deals.[41]

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[37] Id.

[38] Id. ¶ 4.

[39] Id.

[40] See Casson, 455 A.2d at 369 (stating that, with regard to the test of whether "any reasonable justification" existed for an insurer to refuse to honor its contractual obligation, "[t]he ultimate question is whether at the time the insurer denied liability, there existed a set of facts or circumstances known to the insurer which created a bona fide dispute and therefore a meritorious defense to the insurer's liability[ ]").

[41] Pl.'s Resp. to Def.'s Mot. in Limine ¶ 2 (Dkt.# 23).

Plaintiff therefore construes Anticaglia in her favor, as, according to Plaintiff, the judge deciding that matter "did not preclude Dr. Anticaglia from testifying as [D]efendant seeks to do here with respect to Dr. Ufberg."[42] Thus, Plaintiff argues, "[t]he counterarguments of the [D]efendant would clearly go to the weight, not the admissibility of [Dr. Ufberg's] testimony, and the jury, as the trier of fact, would decide the ultimate issue."[43] With regard to Defendant's Rule 702 argument, Plaintiff maintains that Dr. Ufberg's testimony "would not be based upon mere speculation but rather would be the product of reliable princip[le] and method (*i.e.*, the marketplace for his services[,] as supported by the fact that most carriers with which he deals pay his charges in full without reduction) and he charged for his services no differently in this case than in any other."[44]

THE SUMMARY JUDGMENT STANDARD

Summary judgment is granted only when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.[45] The Court must view the facts in a light most favorable to the non-moving party.[46] When the moving party makes this initial showing, the burden then shifts to the non-moving party to demonstrate that there are material issues of fact.[47]

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[42] Id. ¶ 4 (emphasis in original removed).

[43] Id. ¶ 3 (emphasis in original removed).

[44] Id. ¶ 3.

[45] Super. Ct. Civ. R. 56(c); Burkhart v. Davies, 602 A.2d 56 (Del. 1991).

[46] Merrill v. Crothall-American, Inc., 606 A.2d 96, 99-100 (Del. 1992).

[47] Super. Ct. Civ. R. 56(e); Moore v. Sizemore, 405 A.2d 679 (Del. 1979).

In resisting a motion for summary judgment, the non-movant's evidence of material facts in dispute "must be sufficient to withstand a motion for directed verdict [*i.e.*, motion for judgment as a matter of law] and support the verdict of a reasonable jury."[48] Consequently, if (as here) the summary judgment movant does not bear the burden of persuasion at trial, "the movant's burden to show presumptive entitlement to summary judgment is satisfied if the movant points to the absence of any factual support for an essential element of plaintiff's claim."[49]

APPLYING THAT STANDARD, DEFENDANT IS IN PART ENTITLED TO SUMMARY JUDGMENT

The first issue to be discussed is Defendant's assertion that Plaintiff lacks standing to contest the reasonableness of Dr. Ufberg's fees and that "[t]he issue of whether a medical expense is reasonable is an issue properly left to resolution by the…[insurer] and the [medical] provider."[50] As noted, Defendant provides no authority for this assertion. Given that fact (and mindful that the facts must be viewed in the light most favorable to Plaintiff at this summary judgment stage),

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[48] 11 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE § 56.03[3], at 56-35 (3d ed. 2003) (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250-252 (1986)); see also Cerberus Int'l, Ltd. V. Apollo Mgmt., L.P., 794 A.2d 1141, 1148-1149 (Del. 2002) (en banc) (adopting Liberty Lobby's "main holding" that the substantive standard of proof required at trial should also be the substantive standard of proof at the summary judgment stage).

[49] MOORE ET AL., *supra* note 41, § 56.03[5], at 56-39 (citing Celotex Corp. v. Catrett, 477 U.S. 317, 322-324 (1986)); see also Burkhart, 602 A.2d at 59 (stating that the *ratio decidendi* of Celotex is persuasive and directly applicable to circumstances where the non-movant has failed to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof).

[50] Def.'s Mot. ¶ 9.

the Court finds that Defendant has effectively abandoned this claim, and the Court cannot therefore evaluate it in any meaningful manner.[51]

With regard to Defendant's argument that it should be granted summary judgment because Plaintiff "has proffered no evidence that the amounts charged by…[Dr. Ufberg] are reasonable[ ][,]"[52] Defendant correctly posits that this burden lies with Plaintiff herself. As a preeminent treatise on the subject has recognized, "[a] claimant to medical expense benefits [under a relevant no-fault statute] bears the burden of proof to establish by a preponderance of the evidence that the medical services received were necessary and that the bills or charges for such services were reasonable."[53]

With regard to Defendant's ultimate argument in its Motion for Partial Summary Judgment (as well as its argument relative to Dr. Ufberg contained within its Motion in Limine), this Court cannot now say that Defendant's claim of unreasonableness would result in a directed verdict in its favor, were this case to go to trial.[54] In reaching this conclusion, the Court finds that the Anticaglia case is

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[51] See FleetBoston Fin. Corp. v. Advanta Corp., 2003 WL 240885, at *20 (Del. Ch. Jan. 22, 2003) (stating that a court "would be hard pressed to evaluate or respond to an argument that the proponent does not…itself…explain or elaborate[ ]").

[52] Id. ¶ 10.

[53] 17 LEE R. RUSS & THOMAS F. SEGALLA, COUCH ON INSURANCE § 254:59 (3d ed. 2001).

[54] See SUPER. CT. CIV. R. 50 (stating that where there "is no legally sufficient evidentiary basis for a reasonable jury to find for…[a] party on…[an] issue, the Court may determine the issue against the party…").

useful. And for that reason, Defendant's Motion for Partial Summary Judgment on this point is denied.

As stated, Anticaglia recognized that the determination of the "reasonableness" of a medical provider's bills is entirely factual in nature. Of note from that decision (which was tried to a judge as a non-jury appeal from compulsory arbitration)[55] is the Court's statement that although "there was no reliable proof by…[the medical provider who had brought suit to recover unpaid bills] of the ordinary and reasonable charges made by members of [his] profession" and although "[h]e alone testified that…[his charges] were reasonable[ ][,]" the judge trying the case could not "give it full weight under all of the circumstances [t]here[ ]" despite the admissibility of such evidence.[56] The judge did, however, set forth guidelines of the kind of proof that would be reliable in a given case, such proof including:

> the ordinary and reasonable charges usually made by members of the same profession of similar standing for services such as those rendered…, the nature and difficulty of th[ose] [services], the time devoted to it, the amount of services rendered, the number of visits, the inconvenience and expense to which the physician was subjected, and the size of the city or town where the services were rendered.[57]

Nevertheless, the plaintiff-doctor in Anticaglia offered only his "general" testimony that his fees were "reasonable and customary," that the insurance company had "fully allowed" other fees he had charged the patient for whom the insurer subsequently failed to completely reimburse the doctor, and a letter to the

[55] Anticaglia, 1992 WL 138983 at *1.

[56] Id. at *7.

[57] Id. at *6.

insurer claiming that his fees were based on similar charges in "the Delaware Valley Area" when he in fact "did not offer any proof beyond his own ill-defined representations what he meant by this 'region.'"[58]

Applying those precepts here, this Court finds that Dr. Ufberg's testimony as to the "reasonableness" of his billings is in fact admissible at trial, and, as argued by Plaintiff, is for the trier of fact to evaluate. From Plaintiff's initial proffer of the substance of Dr. Ufberg's anticipated testimony, this Court cannot now say that there exists "no reliable proof" upon which such "reasonableness" could potentially be proved at trial; instead, the jury will be instructed as to the Plaintiff's burden of proof by a preponderance of the evidence. Any claim that Dr. Ufberg's method of determining the "reasonableness" of his billings is not reliable is therefore part and parcel of the fact-finder's determination, and this Court will not now exclude Dr. Ufberg from testifying on that alternative ground. Accordingly, Defendant's Motion for Partial Summary Judgment is denied as to this issue, as is its Motion in Limine on the same.

Summary judgment in Defendant's favor on Plaintiff's "bad faith" allegation, however, is warranted. As stated, Casson requires that, in order to maintain a viable "bad faith" cause of action, a plaintiff "must show that the insurer's refusal to honor its contractual obligation was clearly without any reasonable justification."[59] In other words, the Casson Court held, "at the time the

[58] Id. at *5.

[59] Casson, 455 A.2d at 369.

insurer denied liability, there [cannot have] existed a set of facts or circumstances known to the insurer which created a bona fide dispute and therefore a meritorious defense to the insurer's liability."[60] As one treatise on the subject has stated, "[i]n drafting the complaint, it will be necessary for the plaintiff to allege facts showing that the defendant engaged in tortious conduct that was sufficiently aggravated in character…."[61]

Applying those standards here, the Court finds that this portion of Plaintiff's action potentially would not withstand a motion for directed verdict were this case to proceed to trial. In other words, Plaintiff has failed at this juncture to show there existed no "set of facts or circumstances known to the insurer which created a bona fide dispute and therefore a meritorious defense to the insurer's liability[ ][,]"[62] *i.e.*, the trier of fact may determine that Dr. Ufberg's bills were completely "unreasonable." As stated, Plaintiff has taken no discovery in support of its "bad faith" claim; the burden, however, rests on Plaintiff to show that "although she has complied with all policy requirements," Defendant has not

[60] Id.

[61] Roderick J. Mortimer, *Cause of Action to Obtain Punitive Damages in Action Against Insurer for Refusal to Settle or Pay Claim*, *in* 13 CAUSES OF ACTION 729, at 810 (1987); but cf. Tackett v. State Farm Fire and Cas. Ins. Co., 653 A.2d 254, 264 (Del. 1995) (stating that "claims by insureds concerning coverage disputes are subject to a contractual analysis[ ]").

[62] Casson, 455 A.2d at 369.

paid "under the policy."[63] Plaintiff has therefore made nothing more than "[a]n assertion of malice without factual basis…."[64] For that reason, Defendant's Motion for Partial Summary Judgment on this point is granted.

Lastly, Defendant's argument that summary judgment in its favor barring any recovery of attorneys' fees by Plaintiff must also be granted. As the Casson Court noted, "[a]part from authorization in statute or contract, equity is the only basis for awarding attorney's fees to a successful party…."[65] Defendant has stated that there is no relevant provision in the policy at issue here that speaks to an award of attorneys' fees (an argument Plaintiff did not rebut), and the Casson Court indicated that "there is no statutory basis for an award of attorney's fees in th[e] [no-fault] case [arena]."[66] Accordingly, Defendant's Motion for Partial Summary Judgment on this issue is granted as well.

CONCLUSION

For all of the above reasons, Defendant's Motion for Partial Summary

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[63] DEL. P.J.I. CIV. § 17.10 (2000); see also Tackett v. State Farm Fire & Cas. Ins. Co., 653 A.2d 254, 264 (1995) (stating that the presence of bad faith "is actionable where the insured can show that the insurer's denial of benefits was 'clearly without any reasonable justification[ ]'") (citing Casson, *supra*).

[64] Id. at 368.

[65] Id. at 370.

[66] Id.

Judgment is **GRANTED IN PART** and **DENIED IN PART**.[67] With respect to Defendant's Motion in Limine, that motion is **DENIED IN PART** and **DEFERRED IN PART**.

IT IS SO ORDERED.

Very truly yours,

/s/

/jkk

oc: Prothonotary

[67] Given the Court's disposition, it is not necessary that the Court consider the ultimate question posed by Defendant, *i.e.*, whether a medical expense is reasonable "is an issue properly left to resolution by the…[insurer] and the [medical] provider." Def.'s Mot. ¶ 9. Thus it is unnecessary for the Court to construe the language of Delaware Department of Insurance Auto Bulletin No. 10 (written in response to "a number of automobile insurers…refusing to pay…[no-fault] benefits in the amount charged by health care providers as a result of a determination that the amount charged is not 'reasonable'"), attached as Exhibit "E" to Defendant's motion.